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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Jae Seung Lee

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SUITE 700

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EXAMINER

HANSEN, JAMES ORVILLE

ART UNIT

PAPER NUMBER

3637

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/644,961	<b>Applicant(s)</b> LEE ET AL.	
	<b>Examiner</b> James O. Hansen	<b>Art Unit</b> 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-6, 24, 26-50 and 52-79 is/are pending in the application.
- 4a) Of the above claim(s) 34, 47-50, 62, 72-75 and 77 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24, 26-29, 31 and 68 is/are allowed.
- 6) ☒ Claim(s) 1-6, 25, 30, 32, 33, 35-46, 52-61, 63-67, 69-71, 76, 78 and 79 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claim 62 was withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.
2. Claims 34 & 47-50 were withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim.
3. Newly submitted claims 72-75 & 77 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the claimed subject matter disclosed in cite claims are directed to non-elected species as represent in figures 9B, 9C & 9D. It is noted that applicant withdrew claims 72-75 without traverse, while the examiner withdrew claim 77 for the reasons as noted above. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 72-75 & 77 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03. As such, the requirement is still deemed proper and is therefore made **Final**.

### ***Claim Objections***

4. Claims 32 and are objected to because of the following informalities: In Claim 32, the phrase "open at a fronts" should be --open at a front--; and in Claim 65, the phrases "at least one partition wall" should be --partition wall--. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 64 & 65 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim contains subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In Claim 64, there is no support for the recitation of the opening being "lattice shaped" in the disclosure as originally filed. As to Claim 65, the specification on page 17, notes that the support panel is placed in the wall at a position eccentric to the wall toward the freezer compartment. However, the claimed limitation recites "the support panel is in the at least one partition wall at a position eccentric to the at least one partition wall, nearer to one of the at least two storage compartments". This is viewed as a new matter situation since in the spec., "toward" may refer to the direction of the flanged ends on the support panel, while it does not appear from the drawings that the support panel is "nearer" to either of the compartments [it appears to be equally spaced within the partition wall].

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 64 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which

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applicant regards as the invention. Claim 64 is dependent upon canceled claim 7.

For examination purposes, the claim is viewed as being dependent upon claim 63.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-3, 63, 64 & 66 are rejected under 35 U.S.C. 102(b) as being anticipated by Banicevic et al., [U.S. Patent No. 6,036,294]. Banicevic (figures 1-6) teaches of a cabinet (fig. 1) for recessed refrigerators, comprising: an outer casing (12) to define an appearance of the cabinet, the outer casing being open at a front thereof (note fig. 2), an integrated single inner casing (14) installed in the outer casing, with a predetermined space defined between the inner and outer casings (fig. 2), the integrated single inner casing defining therein at least two storage compartment (16, 18) open at fronts thereof, with a partition wall (defined by 64, 62 and 56 e.g.) between the two compartments to maintain a predetermined gap between the compartments; and a support panel (15) disposed within the partition wall and contacting and supporting the outer casing (such as by elements 27). The inner casing comprising a front flange (34) that extends from a front edge of the inner casing toward a front edge of the outer casing to cover a front of the space defined between the inner and outer casings. The cabinet including at least one partition wall structure (stud of 85 so far as broadly claimed) provided in back of a front end surface of the partition wall. The support panel comprising openings (83 e.g.) with the openings being lattice shaped as

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best understood by the examiner (note 112(2) rejection above), wherein both ends of the panel are bent (see fig. 4 – ends of panel (15) are bent – so far as broadly claimed).

11. Claim 38 is rejected under 35 U.S.C. 102(b) as being anticipated by Silva et al., [U.S. Patent No. 5,284,023]. Silva (figures 1-13) teaches of a cabinet (10) for recessed refrigerators, comprising: an outer casing (32) to define an appearance of the cabinet, the outer casing being open at a front thereof (note fig. 2) and stepped at a top (fig. 2) to form a lower step at a front area of the top (viewed as the peripheral stepped lip along the top portion of the cabinet, the outer casing being formed as a single-piece construction) as readily apparent to the examiner, an integrated single inner casing (30) installed in the outer casing, with a predetermined space defined between the inner and outer casings (fig. 3), the integrated single inner casing defining therein at least one storage compartment (note fig. 2) open at a front thereof, and a cover housing (50) provided on the lower step to define a machine room so far as broadly defined. The cabinet further including a cabinet chassis (26, 28 for example) mounted along both an outer surface of the outer casing and the cover housing to finish a front of the cabinet. The cabinet further comprising an intermediate chassis (24, 25 for example) provided to finish a front of a space between the cover housing and the at least one storage compartment, wherein the chassis is interposed, at a first end thereof, between the cover housing and the outer casing (fig. 7), and is bent at a second end (note left end as depicted in figs. 2 & 4) toward a lower edge of the cover housing to cover the lower edge of the cover housing when viewing the cabinet from a frontal perspective.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1-6, 58-60, 67, 70 & 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franck [U.S. Patent No. 3,835,660] in view of Banicevic et al.

Franck (figures 1-7E) teaches of a cabinet (10) for recessed refrigerators, comprising: an outer casing (15) to define an appearance of the cabinet, the outer casing being a box-shaped body open at a front thereof (note fig. 2), an integrated single inner casing (L) installed in the outer casing, with a predetermined space defined between the inner and outer casings (fig. 5), the integrated single inner casing defining therein at least two storage compartments (11, 12) open at fronts thereof, with a partition wall (defined by elements 16 & 17 for example) between the at least two storage compartments to maintain a predetermined gap between the storage compartments; and a "support panel" (reasonably interpreted as either element 20 or 20a so far as broadly recited) disposed within the partition wall. The inner casing comprising a front flange (as shown in figures 5 & 6 for example) that extends from a front edge of the inner casing toward a front edge of the outer casing to cover a front of the space defined between the inner and outer casings as readily apparent to the examiner. The cabinet further comprising at least one partition wall structure (22 - a hot pipe) provided in back of a front end surface of the partition wall. The cabinet further comprising a support member (20a in the sense that element 20 is the support panel - in view of the claimed dependency) installed in the partition wall at a position in back of the at least

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one partition wall structure to support the partition wall structure, wherein the support panel contacts and supports the support member. The partition wall structure comprises a magnetic member made of magnetic material (20a – in view of the claimed dependency). The support panel (20a) is installed in the partition wall at a position between a rear surface of the support member (20) and an inner surface of a rear wall of the outer casing. The support panel being placed in the partition wall at a position eccentric to the wall (note fig. 3 for example) as best understood. Franck teaches applicant's inventive claimed cabinet as disclosed above, but does not show the support panel as contacting the outer casing. Banicevic is cited as an evidence reference to show that it was known in the art to attach a support panel that is within a partition wall to outer sides of a casing {the panel would be modified so as to be attached to the top and bottom sides of the outer casing in this instance}. As such, the position is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the support panel of Franck so as to connected to opposing sides of the cabinet outer casing in view of Banicevic's teaching because this arrangement would provide reinforced support between the top and lower walls of the cabinet exterior shell. The panel comprising at least one opening when modified by Banicevic. As to claims 70 & 71, Franck teaches of an inter-casing structure (24 for example) in the space defined between the casings at a position adjacent to the front flange, wherein a support flange (fig. 6) is on the outer casing that extends toward the inner casing adjacent to the inter-casing structure to support the structure so far as broadly claimed.

14. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Franck in view of Wetherholt et al., [U.S. Patent No. 5,908,229]. Franck (figures 1-7E) teaches



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of a cabinet (10) for recessed refrigerators, comprising: an outer casing (15) to define an appearance of the cabinet, the outer casing being a box-shaped body open at a front thereof (note fig. 2), an integrated single inner casing (L) installed in the outer casing, with a predetermined space defined between the inner and outer casings (fig. 5), the integrated single inner casing defining therein at least two storage compartments (11, 12) open at fronts thereof, with a partition wall (defined by elements 16 & 17 for example) between the at least two storage compartments to maintain a predetermined gap between the storage compartments; and the inner casing comprising a front flange (as shown in figures 5 & 6 for example) that extends from a front edge of the inner casing toward a front edge of the outer casing to cover a front of the space defined between the inner and outer casings as readily apparent to the examiner. The cabinet further comprising at least one partition wall structure (structure as depicted in fig. 3) provided in the space defined between the inner and outer casings so far as broadly claimed. The cabinet comprising a support member (reasonably interpreted as element 20 (portion parallel and adjacent to element 19) so far as broadly recited) disposed adjacent to and within the partition wall structure. (20a in the sense that element 20 is the support panel – in view of the claimed dependency) installed in the partition wall at a position in back of the at least one partition wall structure to support the partition wall structure. Franck teaches applicant's inventive claimed structure as disclosed above, but does not show at least one sealing member provided between the support member and the inner casing. Wetherholt (figures 1-5) teaches the use of a sealing member (viewed as the sealing blocks utilized in figure 2) for the purpose of retaining the insulation material within the cabinet body. Accordingly, the position is taken that it would have been obvious

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to a person of ordinary skill in the art at the time the invention was made to modify the cabinet of Franck so as to incorporate a sealing member as taught by Wetherholt because this arrangement would provide Franck with the means to inhibit the flow of insulation material from areas or spaces not requiring the material.

15. Claims 39-41, 52-57, 61, 76 & 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franck in view of Banicevic and further in view of Solak et al., [U.S. Patent No. 4,970,874]. Franck combined with Banicevic teaches applicant's inventive claimed structure as disclosed above, but do not show the cabinet installed in a recess of a wall or show a cabinet chassis mounted along the cabinet to cover a gap between the cabinet and the wall. Solak (figures 1-15) is cited as an evidence reference to show that it was known in the art at the time the invention was made to provide a recessed wall (wall of cabinets with a recess for a refrigerator) for a refrigerator and to provide a cabinet chassis (cover panels) for enhancing the aesthetics of the cabinet relative to the wall. The chassis comprising first, second and third parts (note figures 4-14) as prescribed by applicant. Accordingly, the position is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to place the modified cabinet of Franck within a recess and to incorporate a cabinet chassis as taught by Solak because this arrangement would provide Franck with the means to provide an attractive exterior appearance to the cabinet if mounted within a recess depending upon the personal needs or desire of the user.

16. Claim 69 is rejected under 35 U.S.C. 103(a) as being unpatentable over Franck in view of Banicevic and further in view of Wetherholt et al. Franck combined with Banicevic teaches applicant's inventive claimed structure as disclosed above, but does not show a sealing member between the support member and the inner casing.

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Wetherholt (figures 1-5) teaches the use of a sealing member (viewed as the sealing blocks utilized in figure 2) for the purpose of retaining the insulation material within the cabinet body. Accordingly, the position is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the cabinet of Franck so as to incorporate a sealing member as taught by Wetherholt because this arrangement would provide Franck with the means to inhibit the flow of insulation material from areas or spaces not requiring the material.

17. Claims 1, 32, 37 & 79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Silva et al., in view of Banicevic. Silva (figures 1-13) teaches of a cabinet (10) for recessed refrigerators, comprising: an outer casing (32) to define an appearance of the cabinet, the outer casing being open at a front thereof (note fig. 2) and stepped at a top (fig. 2) to form a lower step at a front area of the top (viewed as the peripheral stepped lip along the top portion of the cabinet, the outer casing being formed as a single-piece construction as readily apparent to the examiner, an integrated single inner casing (30) installed in the outer casing, with a predetermined space defined between the inner and outer casings (fig. 3), the integrated single inner casing defining therein at least one storage compartment (note fig. 2) open at a front thereof, and a cover housing (50) provided on the lower step to define a machine room so far as broadly defined. The cabinet further including a cabinet chassis (26, 28 for example) mounted along both an outer surface of the outer casing and the cover housing to finish a front of the cabinet. The cabinet further comprising an intermediate chassis (24, 25 for example) provided to finish a front of a space between the cover housing and the at least one storage compartment, the chassis is bent at an end (figs. 2 & 4) toward a lower edge of the cover housing to cover the lower edge of the

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cover housing when viewed from a frontal position. Silva teaches applicant's inventive claimed cabinet as disclosed above, but does not show a partition wall within the cabinet for forming two compartments or show a support panel contacting the outer casing. Banicevic is cited as an evidence reference to show that it was known in the art to provide a refrigerator cabinet with a partition wall (fig. 5) so as to form two distinct compartments and to attach a support panel within the partition wall so as to connect to outer sides of the casing for rigidity purposes. As such, the position is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the cabinet of Silva so as to include a partition wall and a support panel within the wall and connected to opposing sides of the cabinet outer casing in view of Banicevic's teaching because this arrangement would enhance the versatility of Silva's cabinet by providing compartmentalized areas for storing different articles depending upon the personal needs or preferences of the user while the support panel would provide reinforced support between the side walls of the cabinet exterior shell.

18. Claims 33, 35 & 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Silva et al., in view of Banicevic and further in view of Solak et al. Silva when modified by Banicevic teaches applicant's inventive claimed structure as disclosed above, but does not show a cabinet chassis mounted along the cabinet to finish a front of the cabinet. Solak (figures 1-15) is cited as an evidence reference to show that it was known in the art at the time the invention was made to provide a cabinet chassis (fig. 4) for enhancing the aesthetics of the cabinet relative to its surroundings. The chassis comprising a bent part (126) that is bent towards a wall that is capable of covering a gap, and includes L-shaped brackets (134) provided at the corners of the a

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cover housing. Accordingly, the position is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate a cabinet chassis as taught by Solak because this arrangement would provide Silva with the means to provide an attractive exterior appearance to the cabinet if mounted within a recess depending upon the personal needs or desire of the user.

19. Claims 42-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wetherholt in view of Franck and Banicevic. Wetherholt teaches of a cabinet (12) for recessed refrigerators, comprising: an outer casing (40) to define an appearance of the cabinet, the outer casing being a box-shaped body open at a front thereof (fig. 2); an inner casing (defined by 42, 44) installed in the outer casing, with a predetermined space defined between the inner and outer casings (fig. 2), the inner casing defining therein at least two storage compartments (14, 16) open at respective fronts thereof, and a partition wall (18) separating the two compartments, with a front flange (46) extending from a front edge of the inner casing toward a front edge of the outer casing to cover a front of the space defined between the inner and outer casings; and at least one inter-casing structure (viewed as the sealing blocks as shown in fig. 2) provided in the space defined between the inner and outer casings at a position adjacent to the front flange of the inner casing, wherein the outer casing comprises a support flange (note fig. 2) that extends toward the inner casing adjacent to the at least one inter-casing structure to support the inter-casing structure, and the at least one inter-casing structure comprises a sealing member interposed between the front flange of the inner casing and the support flange of the outer casing to prevent a leakage of urethane foam (50) that fills the space between the outer casing and inner casing. Wetherholt teaches applicant's inventive claimed structure as disclosed above, but

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does not show the inner cases and the front surface section as being integrally formed or show a support panel within the partition wall and contacting outer casing. As to the integrally formed member, Franck is cited for the teaching of a pair of inner cases (fig. 5) having a partition wall and a front surface section (fig. 3) in an analogous art, wherein the inner cases and the front surface section are integrally formed as an integrated inner case. Accordingly, the position is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the front surface section of Wetherholt so as to be integrally formed with the inner cases as taught by Franck because this arrangement would require less manipulation by a worker since an integrally formed structure would eliminate an additional securing/fastening process in forming the shell of the refrigerator.

Additionally, the position is taken that the use of "urethane" as a foamed in insulation for refrigerators is well known. Applicant's prior art admission (figures 1-3 and disclosure of pages 1-4) is cited as evidence to the fact that it was known at the time the invention was made to use urethane as in insulation material within a refrigerator. As such, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to vary the type of insulation used by the prior art in view of applicant's disclosure of urethane's use as a refrigerator insulator because such a modification would have involved the mere substitution of one known insulator for another, such a substitution is not viewed as providing a new or unobvious use of a material with respect to the structure upon which it is located for patentability purposes. The maintained desired space between the extension and the front surface of the integral inner case may receive at least one hot pipe to prevent a dewing phenomenon from occurring at a front end of the refrigerator. It is noted that Franck

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utilizes hot pipes (22 e.g.,) along the front surfaces of the refrigerator for this purpose. Accordingly, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate hot pipes within the spaces formed between the front surfaces and extensions of Wetherholt in view of Franck because this arrangement would effectively raise the temperature of the mullion sufficiently to prevent condensation of moisture on the mullion (col. 3 of Franck). As to the incorporation of a support panel. Banicevic is cited as an evidence reference to show that it was known in the art to utilize a support panel (15) within a partition wall that contacts the outer casing. As such, the position is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate a the support panel so as to be connected to opposing sides of the cabinet outer casing in view of Banicevic's teaching because this arrangement would provide reinforced support between the top and lower walls of the cabinet exterior shell.

20. Claim 65 is rejected under 35 U.S.C. 103(a) as being unpatentable over Banicevic. Banicevic teaches the cabinet structure as disclosed above, including the support panel being positioned eccentric with respect to the partition wall (fig. 5), but does not show the panel as being "toward" or nearer to the freezer compartment [Banicevic shows the panel being nearer to the refrigerated compartment]. However, the position is taken that it would have been an obvious matter of personal preference to vary the size of an element or the distances between elements depending upon the needs and/or preferences of the user, since such a modification would have involved a mere change in the size relative placement of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. Furthermore, the Federal Circuit has held that, where the only difference between the prior art and

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the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

*Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984).

### ***Double Patenting***

21. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).



22. Claims 32 & 33 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 12 of copending Application No. 10/644,937 in view of Banicevic et al., [U.S. Patent No. 6,036,294]. The copending application claims corresponding elements such as a cabinet incorporating a machine room on the top of the refrigerator cabinet, but does not account for a support panel within the partition wall. Banicevic (figures 1-6) is cited as an evidence reference for the incorporation of a support panel (15) within a partitioning member dividing refrigerator compartments. As such, the position is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to utilize a support panel within a partitioning wall as taught by Banicevic because such a modification would provide reinforced support between side walls of the '566's cabinet [note col. 4 of Banicevic] thereby enhancing the stability and rigidity of the structure.

This is a provisional obviousness-type double patenting rejection.

23. Claims 1-6, 30, 39-46 & 52-61 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 of copending Application No. 10/385,566 in view of Banicevic et al., [U.S. Patent No. 6,036,294]. The copending application claims corresponding elements as noted above, but does not account for a support panel. Banicevic (figures 1-6) is cited as an evidence reference for the incorporation of a support panel (15) within a partitioning member dividing refrigerator compartments. As such, the position is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to utilize a support panel within a partitioning wall as taught by

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Banicevic because such a modification would provide reinforced support between side walls of the '566's cabinet [note col. 4 of Banicevic] thereby enhancing the stability and rigidity of the structure.

This is a provisional obviousness-type double patenting rejection.

### ***Response to Arguments***

24. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. It is viewed that the above rejections adequately account for the claimed limitations and address applicant's remarks to the same.

### ***Allowable Subject Matter***

25. Pending further review and consideration, Claims 24, 26-29, 31 & 68 are tentatively allowed.

### ***Conclusion***

26. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and

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any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James O. Hansen whose telephone number is 571-272-6866. The examiner can be reached on Monday-Friday between 8-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



James O. Hansen  
Primary Examiner  
Art Unit 3637

JOH  
April 16, 2007